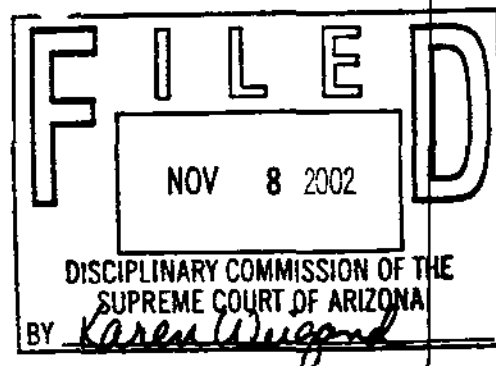


1 Robert A. Clancy, Jr., Bar No. 016424
2 Alison L. Maloney, Bar No. 019434
3 Staff Bar Counsel
4 State Bar of Arizona
5 111 West Monroe, Suite 1800
6 Phoenix, Arizona 85003-1742
7 Telephone (602) 340-7244



8 **BEFORE THE DISCIPLINARY COMMISSION**

9 IN THE MATTER OF A MEMBER) Nos. 00-1039, 00-1343, 00-1634,
10 OF THE STATE BAR OF ARIZONA,) 00-1653, 00-2088, 00-2089,
11) 00-2132, 01-0545, 01-1827,
12) 02-0232, 02-1278¹
13 **CHARLES ST. GEORGE KIRKLAND,**)
14 **Bar No. 018821**) **TENDER OF ADMISSIONS**
15) **AND AGREEMENT FOR**
16) **DISCIPLINE BY CONSENT**
17 **Respondent.**)
18) (Assigned to Hearing Officer 7V)

19 Pursuant to Rule 56(a), Ariz. R. Sup. Ct., and the Guidelines for Discipline by
20 Consent of the Disciplinary Commission of the Supreme Court of Arizona, the State
21 Bar of Arizona and Respondent Charles St. George Kirkland, who is represented by
22 counsel in these proceedings, hereby submit the following Tender of Admissions
23 and Agreement for Discipline by Consent. Respondent agrees to the form of
24 discipline stated herein subject to the approval of the Disciplinary Commission.

25 **FACTS**

Respondent conditionally admits the following facts:

¹ File Nos. 01-1827, 02-0232, and 02-1278 are additional matters.

1 **GENERAL ALLEGATIONS**

2 1. Respondent has been a member of the State Bar of Arizona since
3 May 16, 1998.
4

5 **COUNT ONE (File No. 01-1039)**

6 2. On or about July 21, 1999, Jerome Bonner ("Mr. Bonner") contacted
7 Respondent, via email, for the purpose of inquiring about the costs associated
8 with an uncontested dissolution proceeding. Respondent responded within ten
9 minutes and informed Mr. Bonner what the costs would be.
10

11 3. Respondent also told Mr. Bonner that if his wife, who resided in
12 Italy, did not sign for the paperwork, she would have to be served in Italy and that
13 this would cost more. Mr. Bonner responded that his wife would sign for the
14 documents.
15

16 4. On or about July 22, 1999, Mr. Bonner retained Respondent and sent
17 him the required forms and a \$400 payment. At that time, Mr. Bonner informed
18 Respondent that he was in the armed forces and currently stationed in Arizona,
19 but that he would soon be stationed in Korea shortly thereafter.
20

21 5. On or about August 11, 1999, Mr. Bonner traveled from Sierra Vista
22 to Respondent's office to sign the petition. At that time, Respondent informed
23 Mr. Bonner that the divorce would be final within 120 to 180 days, provided that
24 his wife accepted service of the petition. Mr. Bonner again assured Respondent
25

1 that his wife would accept service. Respondent stressed to Mr. Bonner that if his
2 wife would not accept service, she would have to be served in Italy.

3 6. On August 14, 1999, Mr. Bonner departed for Korea. On August 25,
4 1999, Bonner sent the remaining balance for an uncontested dissolution of \$200.
5

6 7. On August 31, 1999, Respondent filed Mr. Bonner's dissolution
7 petition in Maricopa County Superior Court in the case entitled *Jerome Wilson*
8 *Bonner, Petitioner and Stefania Rigotto*, case number DR 99-15305.
9

10 8. Thereafter, during the months of October and November of 1999, Mr.
11 Bonner and Respondent's then paralegal, Martin Steffenhagen communicated by
12 telephone and email. The paralegal told Mr. Bonner that that the paperwork had
13 been sent to his wife in Italy and that they were awaiting a response from her.
14

15 9. In December 1999 and January 2000, the paralegal responded to email
16 requests from Mr. Bonner and informed him that they had still not received
17 anything from his wife in Italy. In February 2000, the paralegal informed Mr.
18 Bonner that there was nothing further that could be done until his wife accepted
19 service or was personally served in Italy. Mr. Bonner refused to pay to have his
20 wife served in Italy.
21

22 10. On February 24, 2000, the court dismissed the dissolution complaint
23 for lack of service. Thereafter, Respondent's office informed Mr. Bonner that the
24
25

1 dissolution had been dismissed for lack of service and that nothing further could
2 be done unless Mr. Bonner paid to have his wife personally served in Italy.

3
4 **COUNT TWO (File No. 00-1343)**

5 11. On or about June 28, 2000, the State Bar of Arizona received a
6 notice of insufficient funds for Respondent's IOLTA trust account.

7 12. In his response to the State Bar's investigation, Respondent indicated
8 that the account at issue had been opened as an operating account for his firm,
9 Kirkland & Associates, in or about October 1999. It was not until he received the
10 State Bar's inquiry into this matter in or around July 2000, that he learned that
11 Bank One had incorrectly designated this account as an IOLTA account. The
12 bank statements received by Respondent with regard to this account all indicated
13 that this was a basic business checking account with interest. This account was
14 used as an operating account for Respondent's law firm. Throughout the time
15 period relevant here, Respondent maintained his IOLTA account with M&I
16 Thunderbird Account.
17
18
19

20 **COUNT THREE (File Nos. 00-1634 and 00-2089)**

21 13. On January 6, 2000, a deed of trust foreclosure sale took place on
22 property formerly owned by Edward and Sylvia Berry ("the Berrys") that resulted
23 in excess funds in the amount of \$15,458.46. The excess funds were deposited
24 with the Maricopa County Treasurer's Office.
25

1 14. On February 8, 2000, the trustee sent a notice of deposit of excess
2 funds to those who had junior liens and encumbrances on the foreclosed property,
3 including the Berrys and Bank One.
4

5 15. On March 8, 2000, Respondent filed an Application for the
6 Disbursement of Excess Proceeds ("Application") in Maricopa County Superior
7 Court to recover the excess proceeds on behalf of his client, Valley-Wide
8 Productions, in a case entitled *Valley-Wide Productions, LLC* ("Valley-Wide") as
9 *successors in interests of Edward and Sylvia Berry v. Maricopa County*
10 *Treasurer*, case number CV 2000-4283.
11

12 16. Valley-Wide is a corporate entity whose business is to locate people
13 who may be entitled to funds deposited with the county treasurer's office based
14 on excess proceeds from trustee sales.
15

16 17. Respondent failed to mail a copy of the Application to Bank One,
17 who held a superior interest in the proceeds, and failed to inform the court that
18 Bank One held a superior interest in the funds. Respondent mistakenly believed
19 that the document which the trustee had filed with the Treasurer's Office
20 notifying the Treasurer of the deposit of the excess proceeds was the Notice of
21 Deposit. This document had not listed anyone on the document and based upon
22 the course of practice with other trustees, Respondent believed that there were no
23
24
25

1 other parties with interests of record. Thus, Respondent, incorrectly believing
2 this to be the Notice of Deposit, did not send notice to anyone.

3
4 18. Respondent represented to the court that Valley-Wide had sent notice
5 of their application pursuant to ARS §33-812(D).

6 19. Respondent only sent the notice to those parties listed on the Notice
7 of Trustee's Sale and not, as required by ARS §33-812(D), to the parties listed on
8 the Notice of Deposit.

9
10 20. As a result of Respondent's failure to issue the proper notice
11 pursuant to ARS §33-812(D), neither Bank One nor any other junior lienholder
12 had knowledge of Valley-Wide's competing application for the proceeds.

13
14 21. On April 6, 2000, the judge in the *Valley-Wide* case signed an order
15 for disbursement of the excess proceeds to Respondent's client.

16 22. Bank One also filed an Application for the excess proceeds in
17 Maricopa County Superior Court case number CV 2000-3651 entitled *Bank One*
18 *Arizona v. Maricopa County Treasurer*. Bank One obtained an order from a
19 different judge entitling them to the excess proceeds on or about May 25, 2000.

20
21 23. After Bank One learned about the fact that the Maricopa County
22 Treasurer had already disbursed the excess proceeds, On August 1, 2000, they
23 filed a lawsuit against Respondent and Valley-Wide for conversion, fraud and
24 unjust enrichment in Maricopa County Superior Court case entitled *Bank One*
25

1 *Arizona v. Valley-Wide Productions, LLC, Charles St. George Kirkland et al.,*
2 case number CV 2000-14322.

3
4 24. Valley-Wide discovered the lawsuit on or about the day that it was
5 filed. Respondent immediately contacted the attorney for Bank One and payment
6 was made by Valley-Wide to Bank One.

7
8 25. On August 4, 2000, Bank One filed a notice of dismissal with
9 prejudice of CV 2000-14322.

10 26. Respondent brought or asserted a proceeding that proved to be
11 frivolous and non-meritorious.

12
13 27. Respondent engaged in conduct that was prejudicial to the
14 administration of justice.

15 28. Respondent's conduct as described in this count violated Rule 42,
16 Ariz.R.S.Ct., specifically, ER 3.1, and 8.4(d).

17
18 **COUNT FOUR (File No. 00-1653)**

19 29. In June 1998, Respondent agreed to represent Richard Aiello
20 ("Aiello") and some of his neighbors in a lawsuit against a shopping center
21 regarding a noise and light nuisance.

22
23 30. Respondent suggested that the plaintiffs meet without him present
24 and determine how they wished to organize themselves. The group of neighbors
25 met and agreed to organize themselves with voting shares like a corporation. The

1 plaintiffs agreed that a majority of the voting shares would be necessary for
2 decisions regarding the process and/or settlement of the case.

3
4 31. Respondent then filed a lawsuit on their behalf in the Maricopa
5 County Superior Court entitled *Richard and Helen Aiello, et al. v. Bashas, Inc., et*
6 *al.*, case number CV 98-12833. The lawsuit was filed on July 16, 1998.

7
8 32. In or about July 1999, the parties entered into settlement
9 negotiations. Respondent attended a meeting of the plaintiffs to discuss the terms
10 of the settlement. All of the clients were invited to attend the meeting, but Aiello
11 chose not to attend because he did agree with the settlement.

12
13 33. Throughout the representation, Respondent had discussed potential
14 conflicts with the plaintiffs. When the Aiellos chose not to agree to the
15 settlement, Respondent advised them that the other plaintiffs had agreed and they
16 were free to retain substitute counsel to pursue their claims separately.

17
18 34. In or about December 1999, Aiello obtained new Counsel, and
19 Respondent was substituted out of the case.

20
21 35. During the course of the case, the court repeatedly chastised
22 Respondent for his delay and late filings, his failure to provide proper
23 documentation and his failure to properly communicate with opposing counsel.
24 Respondent explained during one of the hearings regarding his conduct, that he
25 had been experiencing a variety of health problems and that his wife, who had

1 been working for Respondent as a paralegal, had recently given birth to their
2 second child. Respondent was able to get the matter back on track and was
3 ultimately able to reach a settlement which was acceptable to all clients except the
4 Aiellos.
5

6 36. Respondent admits that during the course of his handling of the case,
7 he, at times, failed to act with reasonable diligence and promptness in
8 representing his clients.
9

10 37. Respondent admits that as a result of his failure to act with
11 reasonable diligence, his conduct was prejudicial to the administration of justice.
12

13 38. Respondent's conduct as described in this count violated Rule 42,
14 Ariz.R.S.Ct., specifically, ER 1.1, ER 1.3 and ER 8.4(d).
15

16 **COUNT FIVE (File No. 00-2088)**
17

18 39. On or about March 17, 1998, Eddie James Hudson ("Hudson")
19 passed away. At the time of his death there was \$8,888.67 being held by the
20 Maricopa County Treasurer's Office that constituted excess funds from a trustee's
21 sale of property formerly owned by Mr. Hudson.
22

23 40. On or about May 27, 1998, Ronald Cooley ("Cooley") was
24 appointed as the personal representative of Hudson's estate.
25

41. On or about June 24, 1999, Cooley filed an application to obtain the
excess proceeds with the Maricopa County Superior Court and sent copies to all

1 parties with a recorded interest in the property to their addresses of record
2 pursuant to ARS §33-812(D).

3
4 42. On July 14, 1999, L. E. Corporation also filed an application to
5 obtain the excess proceeds with the Maricopa County Superior Court and on
6 January 12, 2000 the actions were consolidated.

7
8 43. In November 1999, Valley-Wide conducted a search for Hudson
9 because it appeared that he was entitled to excess proceeds. During this search,
10 Valley-Wide discovered a general power of attorney from Hudson to Walter
11 Sharkey ("Sharkey"). Valley-Wide contacted Sharkey and was informed that
12 Hudson had died, and that Sharkey was the successor of Hudson and was entitled
13 to Hudson's property pursuant to an Affidavit for Collection of Personal Property
14 that had been executed on September 30, 1998.

15
16 44. On November 29, 1999 Respondent filed an application for the same
17 excess proceeds on behalf of Valley-Wide. Respondent provided notice to the
18 individual that he believed was the representative of Hudson. Respondent did not
19 give notice to L.E. Corporation because his research indicated that the corporation
20 had been administratively dissolved. Respondent notified the court of those
21 individuals that he had provided notice of the application.
22
23
24
25

1 45. On January 21, 2000, Respondent obtained an order to obtain the
2 excess proceeds from the Maricopa County Treasurer's office on behalf of
3 Valley-Wide.
4

5 46. On or about August 4, 2000 Cooley and L.E. Corporation settled
6 their competing application claims to the excess proceeds and then discovered
7 that the excess proceeds had already been distributed. Cooley then filed a Rule
8 60(c) Motion to Vacate. Following a hearing, the matter was ultimately resolved
9 with Valley-Wide paying to Cooley and L.E. Corporation the amount that it had
10 received.
11

12 47. Respondent admits that his conduct was prejudicial to the
13 administration of justice.
14

15 48. Respondent's conduct as described in this count violated Rule 42,
16 Ariz.R.S.Ct., specifically, ER 8.4(d).
17

18 **COUNT SIX (File No. 00-2132)**
19

20 49. Irma Jean Dolan ("Dolan") owned a home located at 1201 West
21 Rose Lane. Dolan became delinquent in her mortgage payments.
22

23 50. The lien holder then commenced a trustee's deed foreclosure sale
24 with Security Title Agency acting as the trustee and set the sale for November 17,
25 1999.

1 51. At the sale, eleven different companies and/or individuals appeared
2 to bid on the property. The total debt owed on the property was approximately
3 \$64,000.
4

5 52. The highest bid at the sale was \$99,050. However, that bidder failed
6 to fully perform pursuant to the trustee sale statutes and the property was offered
7 to the second highest bidder, Monte Pollard ("Pollard") who had bid \$99,001.
8 Pollard elected not to perform on his bid so the trustee set a new sale date and
9 time for the property and notice was sent to all registered bidders.
10

11 53. Prior to the new sale date, Pollard approached the lien holder and
12 offered to purchase the note and mortgage for the full indebtedness of slightly
13 over \$64,000. Pollard purchased the note and mortgage in the name of his family
14 business, Quality Produce Shippers, Inc. ("Quality").
15

16 54. Pollard hired Respondent to act as the Substitute Trustee to conduct a
17 new trustee sale.
18

19 55. On December 20, 1999, Respondent noticed the sale for 9:00 a.m. at
20 Respondent's office located on Bethany Home Road. At 9:00, Respondent
21 postponed the sale until 10:00 a.m. At 10:00, Respondent again postponed the
22 sale until 12:00 and announced that the opening credit bid would be between
23 \$98,000 and \$101,000. At 12:00 p.m., Respondent again postponed the sale until
24
25

1 December 21, 1999 at 10:00 a.m. at Respondent's law office. Potential bidders
2 appeared at each such noticed sale on December 20.

3
4 56. At 10:00 a.m. on December 21, 1999, J. Cox of Respondent's office
5 again postponed the sale until 11:00 a.m. At 11:00 a.m., Mr. Cox again
6 postponed the sale until 1:00 p.m. At 1:00 p.m., Respondent called his office and
7 attempted to postpone the sale because Respondent was at the Southeast Superior
8 Courthouse in Mesa attending to other matters. The bidders that were present
9 demanded that the sale go forward and agreed that the sale would occur at the
10 courthouse.
11

12 57. Respondent did not clarify with the bidders present in his office that
13 the courthouse where he intended to hold the sale was located in Mesa, rather
14 than the courthouse in Phoenix, which was closer to his office.
15

16 58. As a result of Respondent's failure to clarify the sale location, no
17 bidders appeared and the sale occurred at the Mesa courthouse, and the property
18 was sold to Quality.
19

20 59. On December 29, 1999, Respondent caused a trustee's deed to be
21 recorded with the Maricopa County Recorder's Office showing that Quality's
22 profit sharing plan and trust was the successful bidder claiming that the property
23 sold for the credit bid of \$69,969.67.
24
25

1 60. On or about October 12, 2000, Dolan brought suit against Pollard,
2 Quality and Respondent in Maricopa County Superior Court in case number CV
3 2000-18517.
4

5 61. On or about December 4, 2000, Pollard filed a motion to dismiss the
6 Dolan suit. Respondent also filed a motion to dismiss on January 29, 2001.

7 62. Oral argument on Pollard's motion was had on February 6, 2001.
8
9 During the argument on the motion, the following exchange took place:

10 MR. KIRKLAND: "He [Mr. Sherman] also files a Bar complaint at
11 the same time. The Bar does whatever investigation they do and
12 came back and said the sale was conducted properly. Meanwhile --

13 THE COURT: Can I ask a question?
14

15 MR. KIRKLAND: Sure.

16 THE COURT: Are those the words of the Bar Association, the sale
17 was conducted properly, or did they say something else, like, we
18 don't -- we fail to find any ethical impropriety. Did they say that the
19 sale was conducted properly?
20

21 MR. KIRKLAND: No.

22 63. Later during the same hearing, the following exchange took place:
23

24 MR. SHERMAN: . . . Your Honor, the Bar is seriously looking into
25 this. They made no such ruling. I know for a fact that they're

1 looking into this stuff right now. They've got witnesses. And the
2 funny thing is, he knows it. To tell this court that they've dismissed
3 this is unbelievable.
4

5 MR. KIRKLAND: Your Honor, I feel I have to address that. The
6 Bar is not addressing the sale of the -- the conduct of the sale.

7 64. At the time Respondent made those statements, the Bar was still
8 investigating the charges in this matter. However, Respondent had been
9 referencing a previous letter that Rick Sherman, Dolan's attorney, had submitted
10 to the Bar in or around December 1999. In response to that letter, the Bar had
11 indicated that it would not be investigating the matter.
12

13 65. Pollard's motion to dismiss was denied on or about February 21,
14 2001 and Respondent's motion to dismiss was denied on or about March 16,
15 2001.
16

17 66. On or about April 17, 2001, both Pollard and Respondent again filed
18 motions to dismiss the Dolan lawsuit because Dolan had filed an amended
19 complaint.
20

21 67. On September 27, 2001, the court struck Respondent's answer and
22 entered default judgment against him. In its minute entry, the court stated as
23 follows:
24
25

1 "The Court can only conclude from the facts and circumstances of
2 this case that Charles St. George Kirkland, who is an attorney
3 licensed to practice law in the State of Arizona, refiled his Motion to
4 Dismiss solely for the purposes of avoiding the entry of default
5 against him in circumstances in which he had more than an adequate
6 opportunity to file an appropriate answer. This Court is also deeply
7 disturbed with the facts that Mr. Kirkland's office provided an
8 identical motion to Defendant Monte Pollard for filing on or about
9 this same date, after Mr. Pollard's initial Motion to Dismiss had
10 likewise been denied. While Mr. Kirkland may claim a lack of
11 knowledge with respect to the conducts [sic] of his office, as the only
12 attorney in said office, he is solely responsible for any pleadings
13 prepared by such office to be filed with this Court."

14
15
16
17 68. Respondent has appealed the court's ruling striking his Answer and
18 entering a default judgment against him.
19

20 69. Respondent admits that the court found Respondent used means that
21 had no substantial purpose other than to delay or burden a third person.
22

23 70. Respondent failed to properly supervise nonlawyers and failed to
24 make reasonable efforts to ensure that the nonlawyer's conduct was compatible
25 with the professional obligations of the lawyer.

1 71. Respondent engaged in conduct prejudicial to the administration of
2 justice.

3 72. Respondent's conduct as described in this count violated Rule 42,
4 Ariz.R.S.Ct., specifically, ER 4.4, ER 5.3, and ER 8.4(d).
5

6 **COUNT SEVEN (File No. 01-0545)**

7 73. Rody Guinn ("Guinn") saw an advertisement by Respondent for
8 attorney services in the yellow pages advertising a free consultation.
9

10 74. Guinn claimed that he called Respondent's firm and was specifically
11 told that the initial consultation was indeed free. Guinn set up an appointment for
12 March 13, 2001.
13

14 75. Respondent's legal assistant, Edward Ruiz, stated that he scheduled
15 the appointment and informed Guinn that there would be a \$50 consultation fee
16 that would be applied to the full fee if the firm was retained.
17

18 76. On March 13, 2001, Guinn appeared at Respondent's office and
19 proceeded to fill out the initial paperwork. When Guinn was informed that he
20 would be required to pay the \$50.00 consultation fee before being allowed to see
21 a lawyer, Guinn then left the office. Respondent was not able to attempt to
22 resolve the matter because Guinn left before he was able to discuss the matter
23 with him.
24
25

1 77. Guinn checked Respondent's website which indicated a free initial
2 consultation for each case.

3 78. Following this incident, Respondent changed his website to clarify
4 that when the firm is retained, the initial consultation is free.
5

6 **COUNT EIGHT (File No. 01-1827)**

7 79. Respondent Represented Valley-Wide Productions, L.L.C. ("Valley-
8 Wide") in case number CV2000-006255 captioned Valley-Wide Productions,
9 L.L.C., et al. vs. Maricopa County Treasurer ("the case").
10

11 80. The case involved Respondent obtaining excess proceeds from a
12 foreclosure sale on behalf of Valley-Wide.
13

14 81. On February 24, 2000, funds in the amount of \$10,404.23 were
15 deposited with the Maricopa County Treasurer representing the excess proceeds
16 of a Trustee Sale of a certain property in Maricopa County.
17

18 82. On April 3, 2000, Respondent filed an Application for Disbursement
19 of Excess Proceeds ("Application"), purportedly in compliance with A.R.S. §33-
20 812(D).
21

22 83. In the Application, Respondent alleged that it was the successor in
23 interest of the Trustors of the first and second deeds of trust, Danny O. and
24 Shirley A. Covey ("the Coveys"), and therefore was entitled to the \$10,404.23 in
25 excess proceeds remaining from the foreclosure sale.

1 84. The Coveys had previously been mailed copies of the Notice of
2 Surplus Funds from Trustee Sale, together with the attached Affidavit of Mailing,
3 Attached Service List, and Trustee Sale Guarantee.
4

5 85. The Notice received by the Coveys included a list of the liens and
6 encumbrances on the trust property, pursuant to A.R.S. §33-812(C).
7

8 86. In the Application, Respondent incorrectly alleged that he had
9 attached as Exhibit 1 a copy of the Notice of Trustee Sale and Notice of Deposit
10 which according to him indicated who was entitled to receive notice of the
11 Application.
12

13 87. Respondent's Exhibit 1 did not in fact include the documents
14 Respondent claimed it did. Rather, Respondent's Exhibit 1 included a Notice of
15 Trustee Sale as concerns the foreclosure on the second/junior Deed of Trust,
16 which was never completed. Respondent should have attached the correct Notice
17 of Trustee Sale Under Deed of Trust on the first/senior Deed of Trust, because
18 this was the only sale actually completed.
19

20 88. Respondent's Exhibit 1 also included a Deposit of Excess Funds
21 Received at Trustee Sale on Foreclosure that was unrelated to the property.
22

23 89. A.R.S. §33-812(D) required Respondent to mail copies of the
24 application to all parties who were mailed a notice of deposit. Respondent mailed
25 copies only to the Maricopa County Treasurer and the Coveys. This resulted in

1 interested parties who were entitled to notice of the Application having no
2 knowledge of the Application filed by Respondent.

3
4 90. One of the interested persons who did not receive Notice of the
5 Application from Respondent was Suburban Mortgage, Inc., a successor in
6 interest to a Deed of Trust superior to that asserted by Respondent in his
7 Application. BIOYA was the successor in interest to Suburban Mortgage, Inc.

8
9 91. On June 15, 2000, the court signed and entered an Order of
10 Disbursement of Excess Proceeds to Valley-Wide as successor in interest of
11 Danny and Shirley A. Covey.

12
13 92. As a result of the June 15, 2000 Order, Respondent obtained the
14 \$10,404.23 in excess proceeds and disbursed them to his client, Valley-Wide.

15
16 93. Thereafter, BIOYA's attorney, David Knapper ("Knapper"),
17 contacted Respondent and made a demand that Valley-Wide disgorge the excess
18 proceeds to his client.

19
20 94. Knapper sent to Respondent a letter dated June 25, 2001, indicating
21 that unless Knapper received certified funds in the amount of \$10,404.23 made
22 payable to BIOYA by July 2, 2002, he would file a Rule 60(c)(4) motion.

23
24 95. On June 29, 2001, Respondent filed a Complaint in Interpleader,
25 cause number CV2001-010939 naming himself as Plaintiff, and naming, among
others, BIOYA as a defendant. Along with the Complaint, Respondent filed a

1 Certificate of Compulsory Arbitration stating that the matter was subject to
2 mandatory arbitration.

3
4 96. On July 2, 2002, in case number CV2000-006255, Knapper filed the
5 Rule 60(c)(4) motion to set aside the order of June 15 whereby Respondent had
6 obtained the excess proceeds to which BIOYA was entitled. Knapper also filed a
7 Controverting Certificate in case number CV2001-010939 because interpleader
8 actions are not subject to compulsory arbitration.
9

10 97. On October 29, 2001, the presiding judge consolidated the two
11 matters under cause number CV2000-006255.

12 98. The case was thereafter reassigned to the Honorable Margaret H.
13 Downie, who ultimately held a Rule 11 hearing to consider Knapper's Motion for
14 Sanctions against Respondent.
15

16 99. After the hearing, Judge Downie found that Respondent had signed
17 and filed pleadings in violation of Rule 11, *Ariz.R.Civ.Pro.*, including:
18

19 a. The underlying Application for Disbursement of Excess Proceeds
20 (specifically Count One). That filing did not comply with applicable statutes,
21 included irrelevant and/or misleading exhibits, and failed to inform the Court of
22 the existence of a secondary lienholder. This filing, which was not well grounded
23 in fact or law, led to extensive litigation and significant attorneys' fees.
24
25

1 b. Certificate of Compulsory Arbitration filed June 29, 2001 (and not
2 Corrected or supplemented as required by Rule 72, despite BIOYA's
3 Controverting Certificate) and Respondent's acknowledgement that the case was
4 never subject to arbitration.
5

6 c. In a pleading filed June 29, 2001, Respondent avowed that his firm
7 was "ready, willing and able" to interplead the sum of \$10,404.23. Despite this
8 avowal, no funds were deposited with the court. On January 7, 2002, the Court
9 ordered Respondent to file a Memorandum specifically "addressing the amount of
10 the funds to be interplead [sic] in CV2001-010939 and the date by which these
11 funds will be interplead [sic]." The subsequently-filed memorandum stated that
12 \$10,404.23 was "the full amount of the deposit." Respondent was ordered to
13 interplead \$10,404.23 no later than March 15, 2002. Respondent failed to comply
14 or request relief from the order. Respondent testified that the funds were released
15 after the aforementioned Avowals were made to the court, notwithstanding
16 knowledge that BIOYA claimed entitlement to those proceeds.
17
18
19

20 100. The court also found that additional evidence existed to support the
21 claim that Respondent failed to act competently or diligently throughout the
22 proceedings.
23

24 101. Respondent failed to provide competent representation to his client.
25

1 102. Respondent failed to act with reasonable diligence and promptness in
2 representing his client.

3 103. Respondent brought or asserted a proceeding that was frivolous and
4 non-meritorious.
5

6 104. Respondent knowingly made a false statement of material fact or law
7 to a tribunal.
8

9 105. Respondent knowingly disobeyed an obligation under the rules of a
10 tribunal.

11 106. Respondent used means that had no substantial purpose other than to
12 delay or burden a third person.
13

14 107. Respondent engaged in conduct prejudicial to the administration of
15 justice.

16 108. Respondent's conduct as stated in this count violated of Rule 42,
17 Ariz.R.S.Ct., specifically ER 1.1, ER 1.3, ER 3.1, ER 3.3(a)(1), 3.4(c), ER 4.4
18 and ER 8.4(d).
19

20 **COUNT NINE (File No. 02-0232)**

21 109. Respondent Represented Valley-Wide Productions, L.L.C. ("Valley-
22 Wide") in case number CV2000-15509 captioned Valley-Wide Productions,
23 L.L.C. vs. Foreclosure Listings of Arizona, Inc., Sunstar Investments, L.L.C., and
24 Brad and Gina Bendy ("the case"). Brad Bendy (" Mr. Bendy") is the principle of
25

1 Foreclosure Listings of Arizona, Inc. and Sunstar Investments, L.L.C. (the
2 "corporations").

3
4 110. The case involved allegations that Mr. Bendy and his corporations
5 had misappropriated trade secrets or proprietary information belonging to Valley-
6 Wide.

7
8 111. Mr. Bendy's counsel filed a motion for sanctions on October 18,
9 2001, requesting that the case be dismissed for alleged discovery violations.

10 112. By minute entry dated November 16, 2001, the court noted that there
11 was no response to the defendant's motion for sanction. The court further noted
12 that the case was on the inactive calendar for dismissal on November 1, 2002 and
13 that no request for trial was received. The court therefore dismissed the case.
14

15 113. On November 20, 2001, Respondent filed a response to the motion
16 for sanctions. Respondent had also filed, on November 1, 2001, a motion to set
17 and certificate of readiness.
18

19 114. On November 27, 2001, Respondent's staff spoke with the judge's
20 judicial assistant and learned that the judge had not received a copy of either the
21 motion to set or the response to the motion for sanctions. By letter dated
22 November 28, 2001, copies of those documents were provided to the judge.
23

24 115. By minute entry dated December 3, 2001, the court denied
25 defendant's motion for sanctions.

1 116. By minute entry dated December 6, 2001, the court indicated that it
2 had reviewed Respondent's response to the motion for sanctions and that it was
3 not timely filed. The court indicated that its ruling of November 16, 2001
4 remained.
5

6 117. On December 7, 2001, Mr. Bendy received a letter from Verizon
7 Wireless indicating that it had been served a subpoena by Respondent to produce
8 copies of Mr. Bendy's personal records and his corporations' records.
9

10 118. On December 13, 2001, Mr. Bendy's counsel notified Respondent
11 that he had never received a Notice of Deposition scheduling a records deposition
12 as required under Rule 30(a), Ariz.R.Civ.P.
13

14 119. Mr. Bendy's counsel also informed Respondent that the case had
15 been dismissed, and requested that Respondent advise Verizon Wireless that it
16 not longer need comply with the subpoena.
17

18 120. Notwithstanding the minute entries referenced herein, through April,
19 2002, the court calendar on the internet reflected that the case was scheduled for a
20 two day jury trial commencing on June 6, 2002.

21 121. Respondent did not advise Verizon Wireless that the document
22 production was no longer necessary and the records were produced.
23

24 122. By Order dated May 2, 2002, the court noted that the case had been
25 dismissed by minute entry on November 16, 2001, and that no formal order of

1 dismissal was signed. The court noted that the defendants had filed a request for
2 attorneys' fees and costs on November 29, 2001 and that the plaintiff did not
3 object to the request. However, the plaintiff had objected to the dismissal and the
4 request that the case be dismissed with prejudice. The court stated that many of
5 the plaintiff's pleadings were not timely and not delivered to the court and that
6 there had been no activity with the case since December 2001. The court then
7 ruled that the case was dismissed with prejudice and that defendants were entitled
8 to costs and attorneys fees.
9

11 123. Respondent failed to act with reasonable diligence and promptness in
12 representing his client.
13

14 124. Respondent's conduct was prejudicial to the administration of
15 justice.
16

17 125. Respondent's conduct in regard to this count violated Rule 42,
18 Ariz.R.S.Ct, specifically ER 1.3, and ER 8.4(d).
19

20 **COUNT TEN (File No. 02-1278)**
21

22 126. Joseph Glennon ("Mr. Glennon") went to Respondent's office for
23 assistance in incorporating his construction business. Mr. Glennon paid
24 Respondent \$545.00 for this service.
25

1 127. The appropriate documents were prepared and signed by Mr.
2 Glennon and the documents were picked up by the Record Reporter for filing
3 with the Arizona Corporation Commission on May 9, 2002.
4

5 128. On May 20, 2002, Respondent's office received information from
6 the Record Reporter that the original name chosen by Mr. Glennon was too
7 similar to a name currently in use. Mr. Glennon then chose another name for his
8 corporation.
9

10 129. In order to avoid any further delay, the name change was given to the
11 Record Reporter telephonically and they made the change in their office and
12 resubmitted the documents to the Arizona Corporation Commission. Glennon
13 was informed of what had occurred and the reasons for the delay.
14

15 130. At or near the end of May 2002, Respondent's office was informed
16 that Glennon had gone to the Arizona Corporation Commission and filed his own
17 Articles of Organization, and accomplished the goals of the representation on his
18 own.
19

20 131. On or about May 31, 2002, Respondent's office received information
21 from the Record Reporter that the Arizona Corporation Commission had rejected
22 the filing because the name change had not been made in all of the articles of the
23 Articles of Organization. The Record Reporter informed Respondent's office that
24 they had never had any previous filings rejected because of such an error.
25

1 132. Respondent's conduct in regard to this count violated Rule 42,
2 Ariz.R.S.Ct., specifically ER 1.1.

3
4 **COUNT ELEVEN (Prior Discipline)**

5 133. Respondent has previously been sanctioned for violations of the Rules
6 of Professional Conduct. Specifically, in file numbers 98-1746, 98-2263 and 99-
7 1151, Respondent was censured and placed on two years probation by order filed on
8 February 13, 2002, for violations of ER 1.15, ER 3.1, ER 5.4(b), ER 7.1, ER 7.1(f),
9 ER 7.5 and ER 8.4(a), (c) and (d), Ariz.R.S.Ct.
10

11 **CONDITIONAL ADMISSIONS**

12 Respondent conditionally admits that his conduct, as set forth above, violated
13 the following Rules of Professional Conduct and the Rules of the Supreme Court:
14

15	ER 1.1:	3 (Count Four, Count Eight, Count Ten)
16	ER 1.3:	3 (Count Four, Count Eight, Count Nine)
17	ER 3.1:	2 (Count Three, Count Eight)
18	ER 3.3(a)(1):	1 (Count Eight)
19	ER 3.4(c):	1 (Count Eight)
20	ER 4.4:	2 (Count Six, Count Eight)
21	ER 5.3:	1 (Count Six)
22	ER 8.4(d):	6 (Count Three, Count Four, Count Five, Count
23		Six, Count Eight, Count Nine)
24		
25		

1 The State Bar of Arizona conditionally admits that the following ethical
2 violations charged cannot be proven by clear and convincing evidence:

3 ER 1.3: 2 violations (Count One, Count Ten)
4

5 ER 1.4: 2 violations (Count One, Count Four, Count Ten)

6 ER 1.5: 1 violation (Count Ten)

7 ER 1.7: 2 violations (Count Four, Count Six)
8

9 ER 1.15: 1 violation (Count Two)

10 ER 3.3: 2 violations (Count Five, Count Six)

11 ER 3.4: 1 violation (Count Three)

12 ER 4.1: 2 violations (Count Three, Count Five)

13 ER 4.4: 1 violation (Count Nine)
14

15 ER 7.1: 2 violations (Count One, Count Seven)

16 ER 7.3: 1 violation (Count Six)

17 ER 7.5: 1 violation (Count One)
18

19 ER 8.4(a): 1 violation (Count Six)

20 ER 8.4(c): 5 violations (Count Three, Count Five, Count Six,
21 Count Seven, Count Nine)

22 Rule 43, Ariz.R.S.Ct.: 1 violation (Count Two)

23 Rule 44, Ariz.R.S.Ct.: 1 violation (Count Two)
24
25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0

a. Respondent shall be suspended for four (4) years, to commence upon entry of the Final Order in this matter;

c. Restitution in the amount of \$545 to Joseph Glennon.

-30-

1 This Tender of Admissions and Agreement for Discipline by Consent will
2 be submitted to the Disciplinary Commission for approval. Respondent realizes
3 that the Commission may request his presence at a hearing for presentation of
4 evidence and/or argument in support of this Agreement. He further recognizes
5 that the Commission may recommend rejection of this Agreement. Respondent
6 further understands that if the agreement is rejected, his conditional admissions
7 are withdrawn.
8
9

10 *This agreement, with conditional admission(s), is submitted freely and*
11 *voluntarily and not under coercion or intimidation. I am aware of the Rules of*
12 *the Supreme Court with respect to discipline and reinstatement.*
13

14 DATED this 7th day of November, 2002.

15
16
17 Charles St. George Kirkland
18 Respondent


19 DATED this 4th day of December, 2002.

20
21 Nancy A. Greenlee
22 Respondent's Counsel
23

24 * * *
25

1 DATED this 7 day of NOVEMBER, 2002.

2 STATE BAR OF ARIZONA

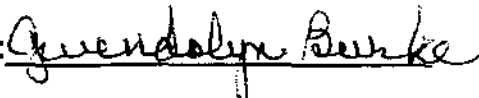
3 
4
5 Robert A. Clancy, Jr.
6 Alison L. Maloney
7 Staff Bar Counsel

8 Approved as to form and content:

9 
10

11 Robert B. Van Wyck
12 Chief Bar Counsel

13 Original filed with the Disciplinary Clerk
14 this 8th day of November, 2002

15 by: 

16 Copy mailed via first class mail/hand delivered*
17 this 8th day of November, 2002, to:

18 Stanley R. Lerner
19 Hearing Officer 7V
20 3707 North 7th Street, Suite 250
21 Phoenix, Arizona 85014

22 Stephen L. Weiss
23 Settlement Officer 9Z
24 P.O. Box 36940
25 Phoenix, Arizona 85067

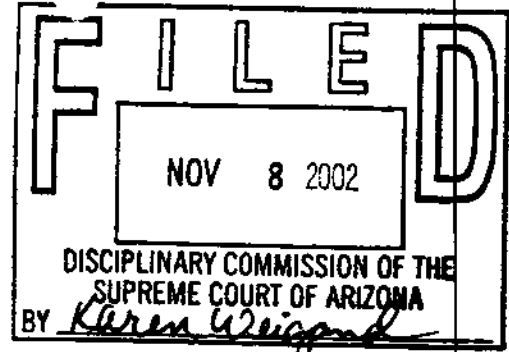
Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, Arizona 85014
Respondent's Counsel

* * *
* * *

1 Linda Perkins*
2 Lawyer Regulation Records Manager
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
by: Gwendolyn Burke
RAC/ALM:gb

1 Robert A. Clancy, Jr., Bar No. 016424
2 Alison L. Maloney, Bar No. 019434
3 Staff Bar Counsel
4 State Bar of Arizona
5 111 West Monroe, Suite 1800
6 Phoenix, Arizona 85003-1742
7 Telephone (602) 340-7244



8 **BEFORE THE DISCIPLINARY COMMISSION**

9 IN THE MATTER OF A MEMBER) Nos. 00-1039, 00-1343, 00-1634,
10 OF THE STATE BAR OF ARIZONA,) 00-1653, 00-2088, 00-2089,
11) 00-2132, 01-0545, 01-1827,
12) 02-0232, 02-1278¹
13)
14 **CHARLES ST. GEORGE KIRKLAND,**) **JOINT MEMORANDUM IN**
15 **Bar No. 018821**) **SUPPORT OF TENDER OF**
16) **ADMISSIONS AND**
17) **AGREEMENT FOR**
18) **DISCIPLINE BY CONSENT**
19 Respondent)
20) (Assigned to Hearing Officer 7V)

21 The State Bar of Arizona and Respondent, who is represented by counsel in
22 these proceedings, hereby submit their Joint Memorandum in Support of the
23 Agreement for Discipline by Consent, filed contemporaneously herewith.

24 **RECOMMENDED SANCTION**

25 The sanction agreed upon by the State Bar and Respondent is that
Respondent be suspended from the practice of law for a period of four (4) years;

¹ File Nos. 01-1827, 02-0232, and 02-1278 are additional matters.

1 In determining the appropriate sanction for Respondent's misconduct, it is
2 useful to review the standards set by the Arizona Supreme Court. First, the
3 purpose of lawyer discipline is not to punish the lawyer, but to protect the public,
4 deter future misconduct, and instill public confidence in the Bar's integrity. In re
5 Horwitz, 180 Ariz. 20, 28-29, 818 P.2d 352 (1994); In re Fioramonti, 176 Ariz.
6 182, 187, 859 P.2d 1315 (1993); In re Murray, 159 Ariz. 280, 282, 767 P.2d 1
7 (1989). Second, in imposing discipline, it is appropriate to consider the facts of
8 the case, the ABA Standards for Imposing Lawyer Sanctions (1991, with 1992
9 amendments) (the ABA Standards), and the proportionality of discipline imposed
10 in analogous cases. In re Bowen, 178 Ariz. 283, 286, 872 P.2d 1235 (1994); In re
11 Fioramonti, 176 Ariz. at 187, 859 P.2d 1315 (1993); In re Murray, 159 Ariz. 280,
12 767 P.2d 1 (1989); In re Rivkind, 164 Ariz. 154 (1990); In re Tarletz, 163 Ariz.
13 548, 554, 798 P.2d 381 (1990); In re Ockrassa, 165 Ariz. 576, 579-580, 799 P.2d
14 1350 (1990).

15 ABA STANDARDS

16 According to the American Bar Association Standards for Imposing
17 Lawyer Sanctions ("ABA Standards") and In re Cassalia, 173 Ariz. 372, 843 P.2d
18 654 (1992), where there are multiple acts of misconduct, the Respondent should
19 receive one sanction consistent with the most serious instance of misconduct, and
20 the other acts should be considered as aggravating factors. In this case, the most
21
22
23
24
25

1 serious instance of misconduct was Respondent's lack of candor in his dealings
2 with the court, opposing parties and counsel in his efforts to obtain excess
3 proceeds from foreclosure sales as detailed in Counts Three, Five, and Eight of
4 the Tender of Admissions and Agreement for Discipline by Consent.
5

6 Respondent's conduct in those counts violated:

7 ER 1.1: 1 violation (Count Eight)

8 ER 1.3: 1 violation (Count Eight)

9 ER 3.1: 2 violations (Count Three and Count Eight)

10 ER 3.3(a)(1): 1 violation (Count Eight)

11 ER 3.4(c): 2 violations (Count Three and Count Eight)

12 ER 4.1: 1 violation (Count Five)

13 ER 8.4(c): 3 violations (Count Three, Count Five, and Count Eight)

14 ER 8.4(d): 3 violations (Count Three, Count Five, and Count Eight).

15 Thus, pursuant to Cassalia, it is appropriate to consider the ABA
16 Standards which apply to a lack of candor.
17

18 ABA Standard 6.1 applies to violations of ER 3.3, ER 4.1, and ER 8.4(d).

19 Absent aggravating or mitigating circumstances, Standard 6.11 states:

20 (s)uspension is generally appropriate when a lawyer knows that false
21 statements or documents are being submitted to the court or that
22 material information is improperly being withheld, and takes no
23 remedial action, and causes injury or potential injury to a party to the
24 legal proceeding, or causes an adverse or potentially adverse effect
25 on the legal proceeding.

1 ABA Standard 6.2 applies to violations of ER 3.3, and ER 3.4. Absent
2
3 aggravating or mitigating circumstances, Standard 6.22 states: "(s)uspension is
4 appropriate when a lawyer knows that he is violating a court order or rule, and
5 there is injury or potential injury to a client or a party, or interference or potential
6 interference with a legal proceeding."
7

8 In the instant case, Respondent conditionally admits submitting false
9 pleadings in order to obtain excess proceeds from foreclosure sales, that he failed
10 to take remedial action after it became known to him that the pleadings filed were
11 false, and that as a result of his failure to take remedial action, the legal
12 proceedings were adversely affected. Therefore, under the applicable ABA
13 Standards, suspension is the presumptive sanction.
14
15

16 **MITIGATING AND AGGRAVATING CIRCUMSTANCES**

17 After determining the presumptive sanction, the next step under the ABA
18 Standards is consideration of aggravating and mitigating circumstances.
19

20 **Aggravating Factors:**

21 9.22(a) prior disciplinary offense - Respondent was previously censured
22 and placed on two (2) years probation for violations of ER 1.15, ER 3.1, ER
23 5.4(b), ER 7.1(f), ER 7.5, ER 8.4(a), ER 8.4(c) and ER 8.4(d).

24 9.22(b) dishonest or selfish motive - the record demonstrates that
25 Respondent engaged in acts of dishonesty.

1 9.22(c) pattern of misconduct - the record demonstrates that Respondent
2 engaged in conduct that violated the Rules of Professional Conduct on multiple
3 occasions, and over a long period of time.

4 9.22(d) multiple offenses - the record demonstrates that Respondent
5 engaged in conduct that violated the Rules of Professional Conduct on multiple
6 occasions.

7 **Mitigating Factors:**

8 9.32(c) personal or emotional problems – Respondent’s judgment with
9 respect to the handling of the excess proceeds matters was compromised by on-
10 going difficulties and personal animosity between him and his opposing counsel.
11 He unfortunately allowed this animosity to impact his ability to effectively handle
12 these matters. He now recognizes that he should have suggested to Valley-Wide
13 that they obtain substitute counsel. However, while he was embroiled in the
14 disputes at issue, he was simply unable to “see the forest for the trees” and he
15 allowed his personal difficulties to blind him to his professional responsibilities
16 and duties.

17 9.32(e) full and free disclosure and cooperative attitude – Respondent has
18 provided full disclosure and been cooperative in these proceedings.

19 **PROPORTIONALITY ANALYSIS**

20 To have an effective system of professional sanctions, there must be
21 internal consistency and it is appropriate to examine sanctions imposed in cases
22 that are factually similar. In re Shannon, Id at 72 (quoting In re Wines, 135, Ariz.
23 203, 207 (1983)). However, the discipline in each case must be tailored to the
24 individual case, as neither perfection nor absolute uniformity can be achieved. In
25 re Riley, 142 Ariz. 604, 615 (1984).

In determining the appropriate sanction for Respondent’s conduct, In re
Fioramonti, SB-92-0040-D and In re Fresquez, SB-88-0046-D, are instructive.

1 In Fioramonti, the respondent attorney was found to have submitted false
2 evidence in a bar proceeding in that he manufactured evidence, committed
3 perjury at his deposition, suborned perjury by obtaining and attempting to obtain
4 false affidavits from three (3) other attorneys, and had attempted to mislead the
5 State Bar of Arizona about the false evidence, in violation of ER 8.1, and ER 8.4.
6 The Disciplinary Committee found in aggravation that there was (1) a pattern of
7 misconduct (2) the submission of false evidence and false statements during the
8 disciplinary process (3) a refusal to fully acknowledge the wrongful nature of his
9 conduct and (4) substantial experience in the practice of law. In mitigation, the
10 Disciplinary Committee found that there was an absence of a prior disciplinary
11 record. Additionally, the Supreme Court found that the responding attorney
12 enjoyed a good reputation in the community. Fioramonti was suspended for three
13 (3) years.

14 In Fresquez, the respondent attorney was alleged to have failed to diligently
15 represent two clients, Louis and Bridget Castro in a negligence case against the
16 City of Flagstaff for the flooding of their home. Through the course of the
17 disciplinary proceedings, the respondent attorney was found to have attempted to
18 mislead the State Bar of Arizona with an untruthful affidavit prepared by him,
19 and signed by his secretary. The Court found multiple aggravating factors,
20 including (1) a dishonest or selfish motive (2) a pattern of misconduct (3)

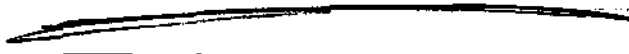
1 multiple offenses (4) bad faith obstruction of the disciplinary proceeding (5)
2 submission of false evidence (6) refusal to acknowledge the wrongful nature of
3 his conduct and (7) the vulnerability of the victim, his client Louis Castro.
4 Fresquez was disbarred for his conduct.
5

6 Like Fresquez, Respondent Kirkland's conduct was done for a selfish
7 motive, on multiple occasions, and over a prolonged period of time.
8 Additionally, Respondent has a prior disciplinary offense, for which he was
9 censured. However, Respondent has demonstrated mitigating factors not present
10 in either Fresquez or Fioramonti. It is this mitigation that makes the proposed
11 sanction of a four (4) year suspension consistent with the cited cases.
12
13

14 CONCLUSION

15 The facts in this case, the ABA Standards, and prior decisions of the
16 Arizona Supreme Court all indicate that the proper discipline in this matter is that
17 Respondent be suspended from the practice of law for a period of four (4) years.
18 The sanction and payment of costs support the purpose of attorney discipline.
19 Respondent and the State Bar respectfully request that the Disciplinary
20 Commission accept this Agreement for Discipline by Consent.
21

22 DATED this 7th day of November, 2002.
23
24

25 
Charles St. George Kirkland
Respondent

1 DATED this 4th day of November, 2002.

2
3 Nancy A. Greenlee
4 Nancy A. Greenlee
5 Respondent's Counsel

6 DATED this 7th day of November, 2002.

7 STATE BAR OF ARIZONA

8 Robert A. Clancy, Jr.
9 Robert A. Clancy, Jr.
10 Alison L. Maloney
11 Staff Bar Counsel

12 Approved as to form and content

13 Robert B. Van Wyck
14 Robert B. Van Wyck
15 Chief Bar Counsel

16 Original filed with the Disciplinary Clerk
17 this 8th day of November, 2002

18 by: Guendolyn Burke

19 Copy mailed via first class mail/hand delivered*
20 this 8th day of November, 2002, to:

21 Stanley R. Lerner
22 Hearing Officer 7V
23 3707 North 7th Street, Suite 250
24 Phoenix, Arizona 85014

25 Stephen L. Weiss
Settlement Officer 9Z
P.O. Box 36940
Phoenix, Arizona 85067

1 Nancy A. Greenlee
2 821 E. Fern Drive North
3 Phoenix, Arizona 85014
4 Respondent's Counsel

5 Linda Perkins*
6 Lawyer Regulation Records Manager
7 State Bar of Arizona
8 111 West Monroe, Suite 1800
9 Phoenix, Arizona 85003-1742

10 by: Jwendelyn Burke
11 RAC/ALM:gb
12
13
14
15
16
17
18
19
20
21
22
23
24
25